

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING AN	)	RESOLUTION NO. 98-2644
INTERGOVERNMENTAL AGREEMENT	)	
WITH THE CITY OF CORNELIUS FOR	)	Introduced by Mike Burton
MANAGEMENT OF PROPERTIES IN THE	)	Executive Officer
GALES CREEK GREENWAY TARGET AREA	)	

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, the Open Spaces, Parks and Streams Bond Measure provided that lands acquired by Metro with the regional share of the bond funds would be "land banked" with minimal maintenance, and no bond funds can be legally used for any operating expenses on these lands; and

WHEREAS, the Open Spaces, Parks and Streams Bond Measure stated that Metro Regional Parks and Greenspaces Department may operate and maintain these lands, or other cooperative arrangements may be made with other jurisdictions or park providers to operate and maintain these lands consistent with the Greenspaces Master Plan; and

WHEREAS, on June 24, 1996, the Metro Council adopted a refinement plan for the Gales Creek regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition, and which encouraged partnerships involving Metro and local governments in the acquisition of land along Gales Creek and its tributaries; and

WHEREAS, in April, 1998, Metro acquired 0.22 acres on the Tualatin River (the "Property") and adjacent to property owned by the City of Cornelius in the Gales Creek target area; and

WHEREAS, the City of Cornelius contributed approximately 10% of the purchase price to the acquisition of the Property; and

WHEREAS, the City of Cornelius and Metro desire that the City of Cornelius should operate, manage, and maintain the Property; and

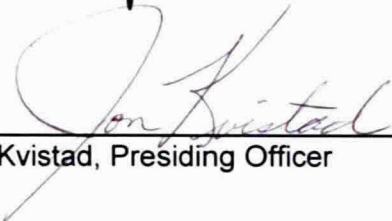
WHEREAS, an intergovernmental agreement (IGA) involving Metro and the City of Cornelius would benefit the Property, as well as the public in general by providing increased care for the Property and by encouraging public use; and

WHEREAS, the IGA attached to this resolution as Exhibit A sets forth management, maintenance, and operation guidelines for the City of Cornelius, requiring that the Property be managed for passive recreation, pedestrian/bicycle use, and habitat restoration, with the primary goal being to enable public canoe access at the westernmost point of the navigable stretch of the Tualatin River; now therefore,

BE IT RESOLVED,

That the Metro Council approves and authorizes the Metro Executive Officer to execute the Intergovernmental Agreement with the City of Cornelius, attached hereto as Exhibit A, wherein the City of Cornelius will manage the Property.

ADOPTED by the Metro Council this 14<sup>th</sup> day of May, 1998.

  
\_\_\_\_\_  
Jon Kvistad, Presiding Officer

Approved as to Form:

  
\_\_\_\_\_  
Daniel B. Cooper, General Counsel

EXHIBIT A  
RESOLUTION 98-2644

INTERGOVERNMENTAL AGREEMENT

Gales Creek/W-D Builders Property

This Intergovernmental Agreement ("Agreement") dated this \_\_\_\_ day of \_\_\_\_\_, 1998, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the City of Cornelius, located at 1355 N. Barlow Street, P.O. Box 608, Cornelius, Oregon 97113 ("the City").

RECITALS:

WHEREAS, the Gales Creek Target Area was identified as a regionally significant open space by the Metro Greenspaces Master Plan, and by the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 ("Metro Open Spaces Bond Measure");

WHEREAS, Metro has entered into an Agreement of Purchase and Sale to acquire approximately .24 acres of real property ("the Property") within the Gales Creek Target Area, as more particularly described in Exhibit A attached hereto and incorporated herein;

WHEREAS, said Agreement of Purchase and Sale is conditioned on the City of Cornelius (hereafter "the City") contributing \$3,500 towards the purchase price and assuming long-term management, operation and maintenance of the Property;

WHEREAS, the Property is within the boundaries the City of Cornelius, Oregon and has been identified as a locally significant site by the City;

WHEREAS, the Property is adjacent to open space property currently owned by the City;

WHEREAS, Metro and the City wish to preserve the Property as open space in accordance with the Metro Open Spaces Measure and the Metro Greenspaces Master Plan;

WHEREAS, on \_\_\_\_\_, 199\_\_, the Cornelius City Council authorized the City to enter into this Agreement with Metro to contribute acquisition funds and to manage, operate and maintain the Property in accordance with the terms set forth in this Agreement; and

WHEREAS, Metro and the City wish to enter into this Agreement to provide for the responsibilities and obligations of the parties with respect to the acquisition, allowable uses, management, maintenance, and operation of the Property;

Now, therefore, the parties agree as follows:

A. Acquisition

1. The City hereby agrees to contribute \$3,500 towards the purchase of the Property. Said funds are to be tendered into escrow on or before the Closing date, April 28, 1998. The purchase price shall be FORTY THOUSAND DOLLARS (\$40,000). Metro shall contribute \$36,500, plus an amount sufficient to cover Closing costs.
2. Metro shall take full fee title to the Property.
3. Metro has entered into a Purchase and Sale Agreement to acquire the Property from the property owner, W-D Builders, Inc. Metro shall be responsible for performing under the terms and conditions of said Purchase and Sale Agreement and any other terms of the transaction as determined between Metro and the Property owner. Metro shall be responsible for conducting the normal due diligence investigations prior to Closing, pursuant to Metro Open Spaces Bond Measure practices. If the City requires any due diligence investigations not normally performed by Metro, the City shall be solely responsible for those items. Metro shall also be responsible for drafting and coordinating escrow instructions and Closing details, and shall pay the Buyer's Closing costs.

B. Management, Maintenance, and Operation

1. As required by the Metropolitan Greenspaces Master Plan, the long-term management guidelines for the Property shall be set forth in a Resource Management Plan ("Management Plan") for the Property, as set forth in Section D below. In the interim between the Closing Date of the acquisition of the Property and the adoption of the Management Plan, the Interim Protection Guidelines set forth in Section C below shall control. The use limitations for the Property outlined in Sections C and D below shall be incorporated in the Management Plan.
2. Metro and the City agree that the City shall be responsible for the ongoing management, maintenance, and operation of the Property, both during the interim period and after adoption of the Management Plan.
3. If Metro executes an agreement to purchase additional property within the Gales Creek Target Area which Metro would like the City to manage under the terms of this Agreement, Metro shall notify the City in writing in the form attached hereto as Exhibit B ("Notice of Acquisition"). The City shall notify Metro if the City does not wish to accept management responsibilities for that property in accordance with this Agreement, using the City's best efforts to make this notification prior to the Closing date for the acquisition. If the City has not so notified Metro within thirty (30) days of receiving Metro's Notice of Acquisition, then the City shall be deemed to have accepted the new Property for management, maintenance and operation responsibilities in accordance with the terms and conditions of this Agreement

4. The term of the City's management, maintenance, and operation responsibilities for the Property shall be determined by the Management Plan, but in no event shall the term be less than ten (10) years from the effective date of this Agreement, renewable by mutual written agreement for additional ten (10) year periods.
5. Metro grants to the City, its agents and contractors, the right to enter the Property for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the Property and for the fulfillment of their duties under this Agreement and pursuant to the Management Plan.

C. Interim Protection Guidelines

1. Prior to the adoption of a Management Plan for the Property, in the interim the Property shall be managed, maintained and operated by the City in accordance and in a manner consistent with this Agreement, the Metro Greenspaces Master Plan and the City's Comprehensive Plan, ("the Plans"). In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.
2. In the interim period and thereafter, the Property shall be managed, maintained, operated, and protected in accordance with its intended use as a natural area open space, with the primary goals being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing.
3. In accordance with the Metro Greenspaces Master Plan, formal public use of the Property and site development on the Property shall not begin until a Management Plan for the Property has been adopted.
4. Prior to the adoption of a Management Plan for the Property, in the interim period, at the City's discretion, the Property may be used informally by the public for passive recreation, habitat enhancement, pedestrian activity, and/or nonmotorized bicycle use. All uses of the Property in the interim period shall be consistent with this Agreement and with the Plans, and shall not preclude any uses that could later be allowed in the Management Plan.
5. Prior to the adoption of the Management Plan for the Property, in the interim period the City shall not allow or permit any alteration of any soil, water, timber, mineral, or other resource on the Property, except for the control of exotic or pest plant species or as necessary to prevent Property degradation or for security or public safety concerns.
6. Prior to adoption of the Management Plan and thereafter, the City shall maintain security of the Property, and shall provide additional fencing, gates, signage, and other measures as the City may deem necessary to increase safety on the Property, and to deter improper public use of the Property prior to adoption of the Management Plan. During the interim period the City shall control access to the Property, and shall respond to neighborhood or citizen complaints regarding improper use or noise on the Property.

**D. Resource Management Plan for the Property**

1. The City shall develop a Resource Management Plan (“Management Plan”) for the Property. The Management Plan shall set forth the acceptable management, operation, maintenance, types and levels of programmed and public use, and trail and improvement standards for the Property. The City shall manage the Property in accordance with the standards and guidelines developed in the Management Plan.
2. The Management Plan shall ensure that the Property is managed, maintained and operated in accordance with the Metro Greenspaces Master Plan and with this Agreement, and that all trails and improvements on the Property comply with the Greenspaces Master Plan and with this Agreement. The Management Plan shall also ensure that the Property is maintained as a natural area open space, with the primary goals being protection of the Property’s natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing. As part of the process of developing the Management Plan, the City shall take an inventory of the resources on the Property.
3. Metro shall designate at least one staff member to participate in the Management Plan process for the Property. In addition to any other approvals required by the City, the Management Plan shall be subject to approval by the Metro Council prior to its implementation, which approval shall not be unreasonably withheld and shall be based on consistency with this Agreement and with the Greenspaces Master Plan.

**E. Permits, Assessments, Coordination with Other Public Agencies**

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Property the City agrees to be responsible for funding the operation and maintenance of the Property with the City’s own resources. The City’s management responsibility shall include responsibility for all taxes or assessments for the Property.
2. Prior to adoption of the Management Plan and thereafter, the City shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Property.
3. Any permits granted by the City to users of the Property shall comply with the terms and limitations set forth in this Agreement and in the Management Plan for the Property.
4. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance or operation issues that may arise with respect to the Property.

F. General Provisions

1. Indemnification. The City, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from the management, maintenance or operation of the Property, including but not limited to construction, maintenance and operation of trails, public access, parking, or any other activity relating to an improvement on the Property.
2. Oregon Constitution and Tax Exempt Bond Covenants. The source of funds for the acquisition of this Property is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The City covenants that it will take no actions that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event the City breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.
3. Signage. The City shall provide on-site signage informing the public that the City is managing the site. Metro will provide on-site signage stating that funding for the acquisition came from Metro Open Spaces Bond Measure proceeds. The City shall also document in any publication, media presentation or other presentations in which the acquisition is mentioned, that funding for the acquisition came from Metro Open Spaces Bond Measure proceeds. On-site signage that provides recognition of Metro funding shall be subject to prior review and comment by Metro. All signage will be consistent with Metro guidelines for Open Spaces Projects.
4. Joint Termination for Convenience. Metro and the City may by mutual agreement terminate all or part of this Agreement based upon a determination that such action is in the public interest.
5. Law of Oregon. This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement including but not limited to ORS 279.015 to 279.320.

- 6. Assignment. The parties may not assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the parties may delegate or subcontract for performance of any of its responsibilities under this Agreement.
- 7. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Metro  
 Charles Ciecko  
 Director, Metro Regional Parks and Greenspaces  
 600 N.E. Grand Avenue  
 Portland, OR 97232-2736

To City: City of Cornelius  
 John C. Greiner  
 City Manager  
 1355 N. Barlow Street  
 P.O. Box 608  
 Cornelius, OR 97113

- 9. Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.
- 10. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to this Property. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

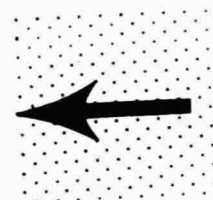
IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth above.

CITY OF CORNELIUS

METRO

By: *Ralph D. Wilson*  
 Title: \_\_\_\_\_

\_\_\_\_\_  
 Mike Burton  
 Executive Officer





**EXHIBIT A**

**Lot 27, DANIELLE PARK, in the County of Washington, and State of Oregon**

## EXHIBIT B

Notice of Acquisition

\_\_\_\_\_, 199\_\_

City Manager  
 City of Cornelius  
 1355 N. Barlow Street  
 P.O. Box 608  
 Cornelius, OR 97113

Re: Acquisition of Property along [target area]

Dear \_\_\_\_\_:

Pursuant to the Metro Open Spaces Bond Measure 26-26, and the Intergovernmental Agreement between Metro dated \_\_\_\_\_, 1998, attached hereto ("Intergovernmental Agreement"), this shall serve as notice of acquisition of the following property along the [target area]:

[Property Address], in the City of \_\_\_\_\_, County of \_\_\_\_\_ and State of Oregon, being more particularly described in Exhibit I attached hereto ("the Property").

Pursuant to the Intergovernmental Agreement, Metro requests that the City manage this Property pursuant to the terms of the Intergovernmental Agreement. Please notify Metro in writing if the City does not wish to accept management responsibility for this Property. As set forth in the Intergovernmental Agreement, if the City does not so notify Metro within thirty (30) days of receipt of this letter, the City shall be deemed to have accepted the new Property for management, maintenance, and operation in accordance with the terms and conditions of the Intergovernmental Agreement.

If you have any questions please do not hesitate to contact me at 797-1914.

Sincerely,

Jim Desmond, Manager  
 Metro Open Spaces Acquisition Division

cc: Charles Ciecko, Director, Metro Regional Parks and Greenspaces

**REGIONAL FACILITIES COMMITTEE REPORT**

CONSIDERATION OF RESOLUTION NO. 98-2644, FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF CORNELIUS, FOR MANAGEMENT OF PROPERTY IN THE GALES CREEK TARGET AREA.

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Date: May 13, 1998

Presented by: Councilor McFarland

**Committee Action:** At its May 13, 1998 meeting, the Regional Facilities Committee unanimously recommended Council adoption of Resolution No. 98-2644. Voting in favor: Councilors McCaig, Naito and McFarland.

**Council Issues/Discussion:** Nancy Chase made the staff presentation for the Regional Parks and Greenspaces Department. In April of 1998 Metro purchased a .22 acre parcel in the Gales Creek target area. This property is adjacent to a .76 acre tract owned by the City of Cornelius. The City wants to develop the parcel for access to the Tualatin River and call it Steamboat Park. The city contributed nearly 10% of the purchase price of the property, and is committed to assuming management responsibility for it. The intergovernmental agreement clarifies those management responsibilities.

## **Staff Report**

### **CONSIDERATION OF RESOLUTION NO. 98-2644 FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF CORNELIUS FOR MANAGEMENT OF PROPERTY IN THE GALES CREEK TARGET AREA**

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**Date:** April 13, 1998

**Presented By:**

**Charles Ciecko  
Jim Desmond**

#### **Proposed Action**

Resolution No. 98-2644 requests authorization for the Executive Officer to execute an intergovernmental agreement (IGA) with the City of Cornelius for management of a property in the Gales Creek Target Area.

#### **Background and Analysis**

In April 1998 Metro purchased from W-D Builders a 0.22-acre property in the Gales Creek target area ("the Property"). The Property is adjacent to a 0.76 acre tract owned by the City of Cornelius. More importantly, the Property is adjacent to the Tualatin River, and will enhance the City's efforts to develop a canoe access point at the site that they will call Steamboat Park. At the turn of the century, the site was a dock for steamboats which traveled the Tualatin from what is now Forest Grove to the Willamette River. Today, the site marks the westernmost point of the navigable extent of the Tualatin River. Canoe access facilities at Steamboat Park will add to the short list of sites where the public can easily access and experience the Tualatin.

The City of Cornelius contributed nearly 10% of the purchase price of the Property. In addition, the City is committed to assuming management responsibilities for the Property. The City of Cornelius IGA enumerates these responsibilities. In order to effectively transfer management responsibilities arising from the Property, the Metro Council should authorize the Executive Officer to execute the IGA.

#### **Findings**

Authorization of the Executive Officer's execution of the City of Cornelius IGA is recommended based on the following:

- The Gales Creek Target Area Refinement Plan includes a partnership objective which encourages the coordinated efforts of government agencies in order to avoid duplication of effort within the target area. The City of Cornelius IGA, by establishing a coordinated ownership and management relationship between Metro and the City of Cornelius, serves this objective.
- Target Area objectives also encourage the protection of riparian properties on Gales Creek and the Tualatin River in order to facilitate public passive recreation opportunities. The IGA serves this objective by allowing the City of Cornelius to implement its plan to develop a canoe access site on the Tualatin River.

- The relatively small size of the site, and its placement within a growing neighborhood, make management of the site more appropriate for a local, rather than a regional, agency.
- The IGA will relieve Metro of management costs arising from the Property, while fulfilling acquisition objectives related to the protection of riparian properties on the Tualatin River.

### **Budget Impact**

The City of Cornelius would become responsible for the management, maintenance and operation of the Property, in conjunction with their own park facilities. This would reduce Metro's land-banking costs and future operation and maintenance expenses.

### **Executive Officer's Recommendation**

The Executive Officer recommends passage of Resolution No. 98-2644.